IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

CRP.No. 749 of 2005

AGAINST THE ORDER DATED 19/03/2005 IN IA.NO.2121/2004 IN OS.18/2004 OF MUNSIFF COURT,ATTINGAL

REVN. PETITIONER: PLAINTIFF:

MARY EDWARD, W/O. LATE B.C.EDWARD,
RESIDING FROM CHARUVILA HOUSE, VAVARAMBALAM,
KEEZHTHONNAKKAL VILLAGE, NOW AT TANK VIEW BUNGLOW,
KUNNUKUZHY POST, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.J.JAYAKUMAR

RESPONDENT: DEFENDANT:

FREDINANT EDWARD,
CHARUVILA HOUSE, VAVARAMBALAM, POTHENCODE,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.N.R.SURESH KUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

I.A.NO.2123/2005 IN C.R.P.NO.749/2005

DISMISSED

16/11/2007 SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

AHZ/

K.T.SANKARAN, J.

C.R.P. NO. 749 OF 2005

Dated this the 15th day of November, 2007

O R D E R

The Civil Revision Petition is filed by the plaintiff in O.S.No.18 of 2004, on the file of the Court of the Munsiff of Attingal, challenging the order, dated 19th March, 2005, passed by the court below. By the order impugned, the request made by the petitioner to withdraw a withdrawal memo was rejected by the court below.

2. It is stated in the Civil Revision Petition that the petitioner is the stepmother of the respondent. The respondent's father married the petitioner on 30.12.1972. At that time, he was a widower. He had five children in the first wedlock. After marrying the petitioner, a daughter was born in that wedlock. It is also stated that the petitioner's husband died on 18.9.2000. A suit for partition was filed by the petitioner, which was partially decreed. The present suit is filed for an injunction restraining the respondent from alienating the plaint schedule property and the building therein. The plaintiff contended that she has a right of residence in the house.

3. It is also stated in the Revision Petition that there was a compromise talk between the parties. Accordingly, a memo, dated 8.2.2004, was filed by the petitioner seeking to withdraw the suit. The

memo was posted for objection and hearing to 26.2.2004. On that date, the respondent filed I.A.No.527 of 2004, claiming compensatory cost for allowing withdrawal of the suit. The memo and the application were being adjourned from time to time. On 27.11.2004, I.A.No.527 of 2004 was dismissed. On 13.9.2004, the petitioner had filed I.A.No.2121 of 2004 to withdraw the withdrawal memo. Thereafter, by the order impugned, I.A.No.2121 of 2004 was dismissed. The reason stated by the court below for dismissing the application is that there is no valid reason for withdrawing the memo.

4. It is true that a memo was filed by the counsel for the petitioner/plaintiff, seeking to withdraw the suit. Later, petitioner filed I.A.No.2121 of 2004 praying that she may be permitted to withdraw the withdrawal memo. By allowing that prayer, the result would be that the court below has to dispose of the suit on the merits. A party approaching the court is entitled to get a decision on the merits of the case. The mere fact that under peculiar circumstances the plaintiff filed a memo seeking to withdraw the suit does not mean that the plaintiff cannot thereafter withdraw that memo. The court below was not justified in dismissing I.A.No.2121 of 2004. I am of the view that the application is liable to be allowed in the facts and circumstances of the case.

Accordingly, I allow the Civil Revision Petition, set aside the order, dated 19.3.2005, in I.A.No.2121 of 2004 and allow the application. The court below shall proceed with the suit in accordance with law.

(K.T.SANKARAN)
Judge

ahz/